IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3589 of 2005

Jaun Ruban Pey .. Petitioner

V/s

Domnic Jaun Pey and Ors..Respondents

Pratap Patil for Petitioner

Shri P.S.Dani for Respondent nos.1 and 2

CORAM:S.A.BOBDE,J.

DATED:18th July 2005

P.C.:-

1. This is a dispute between father who has sued inter alia for an injunction against his son and daughter-in-law who are array defendants.

2. The Petitioner claims to be in exclusive possession of House No.388 land Gat No.156 and Plot CTS No.448. He, therefore, sought an injunction restraining the Respondents from interfering with the possession over house no.388. The learned Advocate for the Petitioners prays that "the Respondents be restrained from ousting the Petitioner from house NO.388 situated at Korlai, Taluka Murud, District Raigad".

3. The trial Court granted an injunction in the following terms :-

> "Application is allowed.
>
> Defendants are restrained from obstructing plaintiff’s possession of house no.388, land Gat No.156 and plot CTS No.448 till final disposal of this suit.
>
> Defendants are also restrained from creating third party interest in any manner so far as house No.338 is concerned, till disposal of the suit.

4. The Appellate Court has modified the injunction order as follows :-

> 2) The order of the lower Court restraining the defendant from causing disturbance to the plaintiff’s possession in respect of the House NO.388 is partly set aside as follows:
>
> A) An injunction granted against the defendant from causing disturbance to the plaintiff’s possession of House NO.388 (exclusively) is hereby vacated. However, the defendants are directed to give undertaking that they will

not create any third party interest in any manner, so far as house property No.388 is concerned, till the disposal of the suit and order of the lower Court in that regard is confirmed.

. As regards the field property, the injunction is maintained.

5. The learned Counsel for the Petitioner expressed his apprehension that this order results in giving power to the Respondents to evict or oust the Petitioner from possession of the suit house. This apprehension is misplaced. The only thing the appellate court has done is that he has ordered that the plaintiff's i.e. Petitioner's possession shall not be exclusive, in other words, the Respondents shall be entitled to reside with the Petitioner. The learned Counsel for the Petitioner states that he has no objection if the Respondents resides with him i.e House no. 388.

6. In this view of the matter, the order calls for no interference. The petition is disposed of with the above observations.

(S.A.BOBDE,J.)